

REMARKS

This is responsive to an Office Action mailed on August 25, 2006. In the Office Action, claims 1, 2, 8, 9, 15, 16, 19, 21, 22, 27 and 28 were rejected and claims 3-7, 10-14, 17-18, 20, 22-25 and 29-31 were objected to. Applicant has amended claims 1 and 8. The application currently includes claims 1-25 and claims 27-31.

The Office Action objected to claim 1 because of informalities in lines 17-21. Applicant has amended claim 1 such that it believes the informalities have been overcome. With the amendment, Applicant respectfully requests that the objection to independent claim 1 be withdrawn.

The Office Action rejected claim 8 under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Office Action alleges that claim 8 lacks antecedent basis for the claim term "actuating mechanism." Applicant has amended claim 8 to overcome the 35 U.S.C. §112, second paragraph rejection. Applicant respectfully requests that the rejection of claim 8 be withdrawn.

The Office Action also rejected claims 1 and 9 provisionally on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1 and 9 of co-pending application no. 10/732,491. Upon a Notice of Allowance of both the present application and co-pending application no. 10/732,491, Applicant will provide a Terminal Disclaimer to overcome the rejection.

The Office Action rejected independent claim 1 under 35 U.S.C. §102(b) as being anticipated by the LeVahn et al., U.S. Patent No. 4,949,707. The Office Action alleges that the LeVahn patent discloses a surgical joint including a first clamping member, a second clamping member, a shaft 156 positioned within

the attachment end of the first clamping member and in communication with the second clamping member and a spring or "force providing mechanism" 170 disposed about the shaft wherein a handle is attached to the force providing mechanism and wrapped up. The Office Action references FIG. 5, col. 6, lines 48-68 and col. 7, lines 1-19 and references marked up FIG. 5 in the Office Action.

Applicant respectfully disagrees that independent claim 1 is anticipated by the LeVahn patent. Claim 1 defines a force providing mechanism being disposed between the first and second clamping members.

There is no disclosure in the LeVahn patent of the force providing member being disposed between the first and second clamping members.

What the LeVahn patent discloses is a spring member positioned between the upper and lower jaws of the second clamping member which biases the upper and lower jaws apart. The spring, being positioned between the upper and lower jaws of the same clamping member, is not disposed between the first clamping member and the second clamping member as claimed. Therefore, the LeVahn patent does not disclose the structure defined in independent claim 1.

Additionally, the invention defined in independent claim 1 further defines the surgical joint as having a handle attached to the force providing mechanism where the outer surface of the handle contacts the force providing mechanism. By definition, a handle is a part that is designed especially to be grasped by the hand. See Exhibit A which is a printout of the definition of a handle from www.m-w.com. There is no disclosure in the LeVahn patent of a surgical joint having a handle attached to a force providing mechanism.

What the Office Action alleges to be a handle, namely an element 152 is not a handle. The element having reference numeral

152 has a plate with a diameter which is greater than an aperture 157 in the lower leg 152 that prevents the shaft from moving with respect to the lower leg. Further, the element 152 is fixed with the aperture 157 to prevent the shaft from rotating as the nut at the other end is rotated by grasping the handle 146.

Applicant submits that it does not understand how the plate extending slightly beyond the bottom surface of the lower clamping leg 152 could be considered to be a handle. It is difficult to determine how one could grasp a plate slightly extending from the bottom surface of the bottom leg.

In contrast to the allegations in the Office Action, the LeVahn patent defines a handle at 146 which is at an end of the shaft opposite to the plate. The handle 146 is pivotally attached to a nut which is threadably attached to the bolt. One skilled in the art would not consider the non-moving plate to be a handle especially when a handle is disclosed as being pivotally attached to the opposite end of the shaft. As such, Applicant respectfully submits that the Office Action has not reasonably interpreted the disclosure of the LeVahn patent.

If the Examiner has support for alleging that the plate that slightly extends from the bottom surface of the bottom clamping member is a handle, Applicant respectfully requests the Examiner provide such evidence. Otherwise, Applicant respectfully requests that the rejection of independent claim 1 as being anticipated by the LeVahn patent be withdrawn.

For the foregoing reasons, independent claim 1 is believed to be in allowable form. Reconsideration and allowance of independent claim 1 are respectfully requested.

The Office Action also rejected dependent claims 2 and 8 as being anticipated by the LeVahn patent for the reasons stated with respect to independent claim 1. While Applicant does not acquiesce to the rejections of dependent claims 2 and 8, Applicant submits that the rejection is moot in light of the fact that

independent claim 1 is in allowable form. Reconsideration and allowance of claims 2-8 are respectfully requested.

The Office Action also rejected independent claim 15 as being anticipated under 35 U.S.C. §102(b) by Farley, U.S. Patent No. 6,033,363. The Office Action alleges that the Farley patent discloses a surgical clamp including a clamping portion 56, a first leg 54, a second leg 64 and a wedge 66 disposed between the first and second legs where the wedge is moved to force the legs in opposite directions and references FIG. 3 and col. 3, lines 29-40. The Office Action further provided a marked up FIG. 3 from the Farley patent to illustrate the interpretation of the Farley patent.

Applicant respectfully disagrees that independent claim 15 is anticipated by the Farley patent. An element of independent claim 15 requires that the surgical clamp comprise a clamping portion, a first leg extending from one side of the clamping portion and a second leg extending from another side of the clamping portion where the first and second legs are spaced apart and where the clamping portion, the first leg and the second leg are of a unitary construction.

There is no disclosure in the Farley patent of a surgical clamp having a clamping portion and a first and second legs extending from the clamping portion where the first and second legs are spaced apart where the clamping portion, the first leg and the second leg are of a unitary construction. Rather, the Office Action is alleging that the bottom leg of an upper clamp and a top leg of a bottom clamp, portions of two separate clamping members, are to be considered a single clamp of a unitary construction. Further, the Office Action does not disclose what is considered to be the clamping portion in the Farley patent.

There is no disclosure of the claimed unitary structure in the Farley patent. As such, Applicant respectfully requests that the rejection of claim 15 by the Farley patent be withdrawn.

For the foregoing reason, claim 15 is not anticipated by the Farley patent. Reconsideration and allowance of claim 15 are respectfully requested.

The Office Action also rejected claims 16 and 19 for the reasons stated with respect to independent claim 15. While Applicant does not acquiesce to the rejection of claims 16-19, the rejection is moot in light of the fact that independent claim 15 is in allowable form. Reconsideration and allowance of claim 16-19 are respectfully requested.

The Office Action rejected independent claim 21 as being anticipated under 35 U.S.C. §102(b) by the Mata et al. patent, U.S. Patent No. 5,752,954. The Office Action alleges that the Mata patent discloses a surgical clamp for clamping to elongated members 80, 90, a mechanism 53 that constricts the opening of the clamping cavity of both members generally simultaneously and a handle fixedly attached to the mechanism and references FIG. 1, col. 2, line 57-col. 4, line 34.

Applicant respectfully disagrees that the Mata patent anticipates independent claim 21. An element of independent claim 21 includes a handle fixedly attached to the mechanism where an outer surface of the handle engages a mechanism. The Office Action is alleging that the component having reference character 60 is a handle. However, there is no disclosure in the Mata patent of the element having reference numeral character 60 as being a handle.

Rather, what the Mata patent discloses is that the reference character 60 is a stop piece. The stop piece is used for holding the stack of jaws around the clamping shaft in order to prevent the latter from detaching from the lower jaw. See col. 4, lines 17-19. Therefore, the Office Action has not reasonably interpreted the disclosure of the Mata patent.

Further, it should be noted that the stop piece is threadably attached to the shaft. A threadable attachment is not a fixed attachment as claimed.

For the foregoing reasons, claim 21 is in allowable form. Reconsideration and allowance of claim 21 is respectfully requested.

The Office Action also rejected claims 22 and 27 for the reasons stated with respect to independent claim 21. While Applicant does not acquiesce to the rejection of claims 22-27, Applicant submits that the rejection is moot in light of the fact that independent claim 21 is in allowable form. Because independent claim 21 is in allowable form, it follows that dependent claims 22-27 are also in allowable form. Reconsideration and allowance of claims 22-27 are respectfully requested.

The Office Action also rejected claim 28 as being anticipated by the Greenstein et al., U.S. Patent No. 5,224,680. The Office Action alleges that the Greenstein patent discloses a clamp including a clamping member 60, a clamping cavity, a bolt or a pin 40, and a pin activating mechanism 41 disposed around the pin and references FIGS. 4A, 4B and col. 4, line 58-col. 5, line 15.

There is no disclosure in the Greenstein patent of the disclosed invention including a pin extending through the clamping member and into the clamping cavity. Rather, the Greenstein patent discloses a threaded bolt which engages a threaded aperture in an upper portion of a clamping member and a spring that biases the clamping members apart from each other. A knob 42 is fixedly attached to the bolt with a pin such that the knob can be rotated which threadably engages a threaded aperture and forces the clamping members towards each other and into the clamping position.

Contrary to the allegations in the Office Action, the pin maintains the upper and lower jaws in alignment. The pin does not extend into the space between the longitudinal notches 50, 52. The pin does not extend into the clamping cavity as claimed. Therefore, the Greenstein does not anticipate independent claim

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For the foregoing reasons, claim 28 is in allowable form. Reconsideration and allowance of claim 28 are respectfully requested.

For the foregoing reasons, the present application is in allowable form. Reconsideration and allowance of the present application are respectfully requested.

Respectfully submitted,

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